



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

November 4, 2011

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Wednesday, November 9, and Thursday, November 10, 2011

Public Retirement Systems Committee

10:00 a.m. on Wednesday, 9:00 a.m. on Thursday, Room 103, Supreme Court Chamber, Statehouse

Wednesday, November 16, 2011

State Government Efficiency Review Committee

9:00 a.m., Room 103, Supreme Court Chamber, Statehouse

Legislative Tax Expenditure Committee

10:00 a.m., Room 116, Statehouse

State Fish and Game Protection Fund Study Committee

10:00 a.m., Room 102, Supreme Court Consultation Room, Statehouse

Thursday, November 17, 2011

Mental Health and Disability Services Study Committee

8:30 a.m., Second Floor, Former Library, Ola Babcock Miller Building

Monday, November 21, 2011

Government Oversight Committee

10:00 a.m., Room 116, Statehouse

Wednesday, November 30, 2011

Inmate Geriatric and Psychiatric Patients Study Committee

10:00 a.m., Department of Corrections Board Room, Jesse Parker Building

Tuesday, December 13, 2011

Administrative Rules Review Committee

9:30 a.m., Room 116, Statehouse

Thursday, December 15, 2011

Mental Health and Disability Services Study Committee

10:00 a.m., Second Floor, Former Library, Ola Babcock Miller Building

December 2011

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Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Public Retirement Systems Committee

Co-Chairperson: Senator Jack Kibbie

Co-Chairperson: Representative Dawn Pettengill

Location: Room 103, Supreme Court Chamber, Statehouse

Dates & Times: Wednesday, November 9, 2011, 10:00 a.m. and Thursday, November 10, 2011, 9:00 a.m.

Contact Persons: Ed Cook, Legal Services, (515) 281-3994; Andrew Ward, Legal Services, (515) 725-2251; Rick Nelson, Legal Services, (515) 242-5822.

Agenda: Receive presentations concerning Iowa's public retirement systems: Municipal Fire and Police Retirement System of Iowa (Chapter 411), Peace Officers' Retirement System, Judicial Retirement System, and Iowa Public Employees' Retirement System (IPERS). Presentation on Iowa's Retirement Investors Club (RIC). Presentations from persons interested in the systems and Committee discussion.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=57>

State Government Efficiency Review Committee

Co-Chairperson: Senator Jeff Danielson

Co-Chairperson: Representative Peter Cownie

Location: Room 103, Supreme Court Consultation Room

Date & Time: Wednesday, November 16, 2011, 9:00 a.m.

Contact Persons: Rick Nelson, Legal Services, (515) 242-5822; Andrew Ward, Legal Services, (515) 725-2251; Ed Cook, Legal Services, (515) 281-3994.

Agenda: Review the major projected areas of financial savings contained in recent state government reorganization and efficiency-related legislation to determine the extent to which such savings have been realized, and consider additional or alternative suggestions or approaches for achieving more efficient state government operation.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=540>

Legislative Tax Expenditure Committee

Co-Chairperson: Senator Joe Bolkcom

Co-Chairperson: Representative Thomas Sands

Location: Room 116, Statehouse

Date & Time: Wednesday, November 16, 2011, 10:00 a.m.

Contact Persons: Michael Duster, Legal Services, (515) 281-4800; Susan Crowley, Legal Services, (515) 281-3430.

Tentative Agenda: Receive reports concerning the state's contingent liabilities, maximum tax credit limits for certain economic development programs, earned income tax credit, franchise tax credit, high quality jobs program, and research activities tax credit, and a demonstration of searchable tax incentive database. Plan for 2012 reviews.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=511>

State Fish and Game Protection Fund Study Committee

Co-Chairperson: Senator Dennis Black

Co-Chairperson: Representative Henry Rayhons

Location: Room 102, Supreme Court Consultation Room

Date & Time: Wednesday, November 16, 2011, 10:00 a.m.

Contact Persons: Doug Adkisson, Legal Services, (515) 281-3884; Ann Ver Heul, Legal Services, (515) 281-3837; Jack Ewing, Legal Services, (515) 281-6048.

Tentative Agenda: Receive presentations concerning the trust fund budgeting and expenditures from the Legislative Services Agency and the Department of Natural Resources (DNR), including an overview, history, Wildlife Bureau, Law Enforcement Bureau, Fisheries Bureau, and the process for budget and decision making.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=543>

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Mental Health and Disability Services Study Committee

Co-Chairperson: Senator Jack Hatch

Co-Chairperson: Representative Renee Schulte

Location: Second Floor, Former Library, Ola Babcock Miller Building

Date & Time: Thursday, November 17, 2011, 8:30 a.m.

Contact Persons: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Rachele Hjelmaas, Legal Services, (515) 281-8127.

Tentative Agenda: Receive testimony from representatives of the six workgroups that met in August through October and developed recommendations in the preliminary written report submitted by the Department of Human Services to the Study Committee on October 31, 2011, and information concerning residential care facilities (RCFs). See Internet page for the report. Committee discussion.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=541>

Government Oversight Committee

Senate Chairperson: Senator Thomas Courtney

House Chairperson: Representative Chris Hagenow

Location: Room 116, Statehouse

Date & Time: Monday, November 21, 2011, 10:00 a.m.

Contact Persons: Sue Lerdal, Fiscal Services, (515) 281-7794; Rick Nelson, Legal Services, (515) 242-5822; Doug Adkisson, Legal Services, (515) 281-3884.

Tentative Agenda: Receive background and other information from LSA concerning Iowa Code Chapter 8F, relating to government accountability and service contracts, and related presentations from the University of Iowa Nonprofit Center and United Way of Central Iowa. Receive reports regarding the Grants Enterprise Management System (GEMS), preneed funerals and perpetual care cemeteries, and E-911 services.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=41>

Inmate Geriatric and Psychiatric Patients Study Committee

Co-Chairperson: Senator Tom Hancock

Co-Chairperson: Representative Gary Worthan

Location: Department of Corrections Board Room, Jesse Parker Building

Date & Time: Wednesday, November 30, 2011, 10:00 a.m.

Contact Persons: Joe McEniry, Legal Services, (515) 281-3189; Rachele Hjelmaas, Legal Services, (515) 281-8127.

Agenda: To be announced.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=542>

Administrative Rules Review Committee

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, December 13, 2011, 9:30 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<http://www.legis.state.ia.us/asp/BulletinSupplement/bulletinListing.aspx>

Mental Health and Disability Services Study Committee

Co-Chairperson: Senator Jack Hatch

Co-Chairperson: Representative Renee Schulte

Location: Second Floor, Former Library, Ola Babcock Miller Building

Date & Time: Thursday, December 15, 2011, 10:00 a.m.

Contact Persons: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Rachele Hjelmaas, Legal Services, (515) 281-8127.

Agenda: To be announced.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=541>

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

MENTAL HEALTH AND DISABILITY SERVICES STUDY COMMITTEE

October 24, 2011

Co-Chairperson: Senator Jack Hatch

Co-Chairperson: Representative Renee Schulte

Charge. The Study Committee was created by the Legislative Council with the following charge: Review publicly supported mental health and disability services (MH/DS). The Study Committee shall closely engage with, monitor, and propose legislation concerning the recommendations and proposals developed by the workgroups implemented by the Department of Human Services (DHS) and other bodies addressed by 2011 Iowa Acts, S.F. 525. The legislators serving on the interim committee and other interested legislators are authorized to participate in the meetings of the workgroups and subcommittees addressed by the legislation. In addition to the workgroup recommendations, the Study Committee shall address property tax issues, devise a means of ensuring the state maintains its funding commitments for the redesigned services system, recommend revisions in the requirements for mental health professionals who are engaged in the involuntary commitment and examination processes under Code Chapter 229, recommend revisions to the Code Chapter 230A amendments contained in S.F. 525 as necessary to conform with the system redesign proposed by the Study Committee, develop proposed legislation for amending Code references to mental retardation to instead refer to intellectual disabilities, and consider issues posed by the July 1, 2013, repeals of county disability services administration and funding provisions in 2011 Iowa Acts, S.F. 209. In addressing the repeal provisions, the Study Committee shall consider all funding sources for replacing the county authority to levy for adult disability services.

Background. DHS initiated seven workgroups to develop proposals and recommendations for the Study Committee for redesign of the services systems. Most of the workgroups have met every other week from mid-August until the end of October. In addition, DHS has held several public hearings in locations around the state. DHS will submit a preliminary report to the Study Committee by October 31, 2011, and a final report in December 2011. Information concerning the workgroups is posted on this Internet page: <http://www.dhs.state.ia.us/Partners/MHDSRedesign.html>.

The workgroups that will be reporting at the end of October are as follows:

- Adult Mental Health System Redesign Workgroup (MH)
- Best Practices and Program for Persons with Brain Injury Workgroup (BI)
- Adult Intellectual and Developmental Disability System Redesign Workgroup (ID-DD)
- Children's Disability Services Workgroup (Children)
- Regionalization Workgroup (Regional)
- Judicial Branch and DHS Workgroup (Judicial-DHS)
- Psychiatric Medical Institutions for Children (PMIC) Transition Workgroup

Initial Meeting. At this meeting Senator Hatch and Representative Schulte were elected permanent co-chairpersons and received presentations concerning state and local budgets generally, adult MH/DS in particular, comparisons of Iowa nationally and with other states, school finance, and an update concerning the workgroups.

State Budget. Mr. Jeff Robinson and Mr. Dave Reynolds, LSA Fiscal Services Division, provided an overview on state finances for the current and succeeding fiscal years. For FY 2011-2012, current estimates project a State General Fund ending balance of \$64.6 million after appropriations of just under \$6 billion. For FY 2012-2013, absent any law changes, the preliminary base budget, including built-in expenditures of \$286 million, is projected to be approximately \$6.5 billion. Under the state's General Fund Expenditure Limitation law, there is projected to be \$6.4 billion available for expenditure, resulting in a projected need to adjust the budget by approximately \$116 million. In response to questions, it was noted that the adjustment needs for preliminary base budgets in recent fiscal years have typically been in the \$220 million to \$400 million range, with outliers in the \$800 million to \$1 billion range.

County Levy Authority. Mr. Michael Duster and Mr. John Pollak, LSA Legal Services Division, and Ms. Linda Hinton and Mr. Bill Peterson, Iowa State Association of Counties (ISAC), discussed county property tax levy authority. Mr. Duster provided a written presentation. The basic county levies are for rural services to residents in unincorporated areas of the county and general services for all county residents. Among counties, 97 of the 99 counties are levying for general services at the maximum amount of \$3.50 per \$1,000 in property valuation. If the basic levies are insufficient to meet the need, a county may certify a supplemental levy, request voter approval in a special levy election, or certify additions to the basic levy.

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(Mental Health and Disability Services Study Committee continued from Page 4)

Supplemental levy authority allows a county to levy additional property taxes to pay for certain specific social services other than MH/DS, and other expenses such as election costs and employee benefits. A county may also ask voter approval for other additions to the basic levies for a specified period of years and rate of taxation.

If unusual circumstances exist such as unusual increase in population, a natural disaster or other emergency, or reduced or unusually low growth in the property tax base, a county may certify other additions to the basic levies.

In discussion, it was suggested that if the General Assembly does not enact provisions to replace the county levy authority for MH/DS, state property tax relief and growth funding provisions, and service management provisions that under current law are repealed on July 1, 2013, (2011 Iowa Acts, S.F. 209), while maintaining the legal mandates for counties to provide adult MH/DS, then counties will likely look to the authority for additions to the basic levies in order to comply with the service mandates. For the period beginning in 1996 until the repeals take effect, counties remain subject to the overall dollar amount levy limit of approximately \$125 million (other levy limitations are expressed as a dollar amount per \$1,000 in property valuation and can rise and fall with changes in property valuation). The policy objective for the 1996 state reforms which limited the levies was for the state to assume all of the growth in expenditures.

County, State, and Federal Expenditures for Publicly Funded Adult MH/DS. Mr. Charles Palmer and Ms. Sally Titus, DHS, and Ms. Linda Hinton, ISAC, discussed materials prepared by DHS concerning the expenditures. In FY 2009-2010, the combined expenditures amounted to approximately \$1 billion, provided by the federal (60.6 percent), state (28.9 percent), and county (10.5 percent) governments. Other factors discussed include:

- Of the \$1 billion in expenditures: approximately 69 percent is for services to persons with intellectual or developmental disabilities, 29 percent is for services to person with mental illness or chronic mental illness, and 2 percent for services to persons with brain injury.
- Over the past several years, the increases in Medicaid expenditures for these populations have exceeded the growth in state revenues appropriated for counties. The federal stimulus funding over the past three years covered much of the growth need. However, that funding is no longer available, plus the federal Medicaid match rate has been reduced for Iowa, accelerating the need for additional Medicaid funding.
- Consequently, unless significant new funding is provided to counties, it is projected that funding available for non-Medicaid services, primarily for persons with mental illness or chronic mental illness, will be reduced by approximately \$9.5 million in the current fiscal year and by approximately \$56 million in FY 2011-2012.
- Due to the overall dollar limitation on county levies since 1996, the proportion of state funding in the system has steadily increased since that time. In discussion it was clarified that because the funding utilized by counties is a blend of federal, state, and county sources, that funding may be termed as “county controlled” funding rather than “county funding.”
- In response to a question as to whether there are unutilized opportunities to draw more federal funding for services to these populations, it was clarified that while services for developmental disabilities other than intellectual disability could be considered, services for the DD population are not currently mandated and so could be considered an expansion of costs rather than savings.

Technical Assistance Collaborative (TAC)—Consultant for Workgroup—Overview. Mr. Steve Day, Ms. Valerie Bradley, and Mr. Kevin Martone, TAC, provided a national perspective on the organization and financing of MH and ID-DD services. Mr. Day and TAC served as consultant for the General Assembly for MH/DS reform efforts in the mid-1990s and have been retained by DHS for this redesign effort. Ms. Bradley also serves as the President of Human Services Research Institute (HSRI), a nationally recognized resource for services to persons with ID or DD. Mr. Martone has experience as director of the mental health authority in New Jersey and recently as President for the National Association of State Mental Health Program Directors (NASMHPD).

TAC—ID-DD Services. Ms. Bradley explained that Medicaid home- and community-based services waivers represent the dominant funding source for persons with ID-DD and accounts for 75 percent of all waiver spending. Her observations concerning services for persons with ID-DD included the following:

- Iowa has a much higher percentage of individuals served in large residential settings than the national average.
- Iowa's percentage of Medicaid funding for services to persons in an intermediate care facility for persons with mental retardation (ICF/MR) is higher than the national average and the proportion of spending for persons on waiver services is lower. However, the percentage of Medicaid recipients on the waiver is close to the national average.

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(Mental Health and Disability Services Study Committee continued from Page 5)

TAC—Adult MH Services. Mr. Martone compared Iowa's MH services system administrative structure and funding to other states based on NASMHPD data. His observations included the following:

- Iowa's per capita funding for adult MH services was approximately \$136 per capita as compared to the national average of \$129 per capita.
- Iowa's rate of placement of residents in a state mental health institute of 6.8 residents per 100,000 population is much lower than the national average of 18 residents per 100,000 population. In discussion it was suggested that the lower rate may be due to recent state budget reductions and resultant closing of beds and that the lack of psychiatric beds in community settings has resulted in the institutes filling the need for short-term acute treatment.
- In national prevalence data, 25 percent of the general population will have a diagnosable mental illness during the course of a year and 6 percent will have a serious mental illness, suggesting that Iowa's "penetration" rate for service provision appears to be low.

TAC—Children's MH Services. Mr. Day explained that children's services do not have data systems comparable to those for the adult systems and are very complex. His presentation materials provided many detailed state-specific examples but his presentation was shortened due to time considerations. His observations concerning children's systems included the following:

- Effective children's systems should have the following: multiple funding streams, active participation by parents and families both as primary caregivers and prevention agents, and single points of accountability to ensure the funding streams and service providers are working together.
- Reorganization of systems does not necessarily lead to positive results, the focus should be to ensure the pieces of a system work together.
- There are examples of state-only administered systems, county-based systems with local levies, county-based integrated managed care with state funds, and statewide, full-risk managed care. The majority of state systems have some county or other means of providing local involvement.

School Aid Formula Funding. Mr. Shawn Snyder, LSA Fiscal Services Division, and Mr. Michael Duster, LSA Legal Services Division, were asked to provide an overview of the school aid formula, as it provides a system for shared state and local funding of designated services. The concepts discussed include the following:

- The formula is driven by the number of pupils, with extra weighting provided in the pupil count for children with special education needs or other special circumstances.
- The state cost per pupil and the district cost per pupil, adjusted by the rate of allowable growth established in law by the General Assembly, are to determine a foundation level, which based upon additional calculations, is used to determine how much state aid is provided to a school district and how much the school district is authorized to levy in property tax.
- Currently, the state foundation aid is calculated at 87.5 percent of the total of the state cost per pupil. The uniform local school district levy of \$5.40 per \$1,000 of property valuation is applied to go as far as possible toward funding the foundation aid amount and state appropriations fund any shortfall. A school district then certifies an additional levy to fund the remaining 12.5 percent.
- The additional levy rate for lower property valuation school districts is higher than for school districts with higher property valuations.
- In addition, school districts may levy an income surtax at a maximum rate of 20 percent for certain purposes and approximately 83 percent of school districts apply the surtax at various rates. The income surtax for schools is an itemized state income tax deduction so that it has the effect of reducing state General Fund revenues.
- In general, the additional levy rate for school districts with low property valuations is higher than for school districts with high property valuations.

Update on Workgroups. DHS Director Palmer provided an update on the six workgroups listed in the background § of this briefing. He noted that with the unusually late adjournment of the General Assembly, the time period for the workgroup process has been quite compressed. Over 200 persons volunteered, and approximately 100 persons have been participating with subject matter expertise, both rural and urban backgrounds, and representation for consumers, parents, and advocates. The recommendations will be forwarded to the Study Committee on October 31 but opportuni-

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ty for additional input by workgroup members will be provided so that adjustments are likely by the time the recommendations are formally presented at the Study Committee's November meeting. Most recommendations are the result of consensus or workgroup majority. Some of the written reports may be lengthy in order to capture the context for the recommendations. Director Palmer's observations included the following:

- The participants have been concerned about the speed of the redesign process and about inadvertently losing some of the positive aspects of the current system.
- There was much discussion about the intersections between the mental health and criminal justices systems and the need for alternatives and crisis stabilization services.
- There is much interest in more holistic approaches such as system of care and medical home approaches and the need for wrap-around services, housing, employment, transportation, and recreation.
- There was much discussion of workforce issues, such as provider recruitment and retention, scope of practice, peer support, and telemedicine.
- For children's services, there was discussion of the need to bring children back from out-of-state placements and the concepts associated with the systems of care approach.
- There was much discussion of issues associated with moving to a regional delivery system such as size, eligibility, functions, default mechanisms for counties choosing not to participate, residency, and appeals processes.
- The brain injury workgroup has collected information on best practices among the states and prioritized action steps.
- Several workgroups discussed the appropriate role for residential care facilities (RCFs).
- The PMIC workgroup has just begun deliberations and along with the children's services workgroup will complete its work following a second year of deliberations.

Member Discussion. The items discussed by the Study Committee members include the following:

- Considering draft legislation to change Iowa Code references from the term "mental retardation" to "intellectual disability" and from the term "adult day care" to "adult living services."
- Focusing on an appropriate funding structure, the need to integrate services to address co-occurring conditions, health homes to better integrate physical and mental health services, and the appropriate role of RCFs and state institutions in the services systems.
- Providing the public with a live audio stream for future Study Committee meetings.
- Getting better information concerning state and county-administered funding.

Public Comment. The Study Committee received public comment on the need to check information provided concerning ICF/MR rates and the rate of utilization of RCFs with 16 beds or more, information on the Prairie View RCF in Fayette, and from ISAC clarifying views of counties. Members requested additional information concerning RCFs.

Future Meetings. The next meetings of the Study Committee are scheduled for Thursday, November 17, 2011, at 8:30 a.m. and for Thursday, December 15, 2011, at 10:00 a.m. in the Miller Building at the Capitol Complex.

LSA Contacts: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=541>

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LEGAL UPDATE

Purpose. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General Opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

LEGAL UPDATE—ATTORNEY-CLIENT CONFIDENTIALITY

Filed by the Iowa Supreme Court
September 30, 2011

State v. Walker

No. 10-0525

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20110930/10-0525.pdf

Factual Background. The defendant was pulled over at approximately 2:20 a.m. by the Ankeny police for driving down the center dividing line of a major road. The police suspected the defendant was operating a motor vehicle while intoxicated (OWI). After the police stopped the defendant's vehicle, the defendant failed several field sobriety tests but the defendant refused to take the preliminary breath test (PBT). The defendant was subsequently arrested for OWI and taken to the Ankeny police department. While at the police station, a police officer gave the defendant an implied consent advisory and offered the defendant an opportunity to make telephone calls as required by Code §804.20. An attorney was reached by phone and arrived at the Ankeny police station at 4:42 a.m. A police officer permitted the attorney to consult with his client in a glass-partitioned booth through an intercom system. The booth was also monitored by a security camera. There were no signs in the consultation area indicating whether audio or visual monitoring was being used. It was determined the defendant was nonviolent and cooperative throughout the arrest and detention. The attorney requested a private room to make his own assessment of his client's intoxication before advising his client about whether to take the breath test. The officer stated that department policy prohibited all visitors from entering the detention area and having a private consultation. After conferring with his attorney through the partition the defendant took the breath test and his blood alcohol level measured 0.186 percent which is more than twice the legal limit.

Procedural Background. The defendant filed a motion to suppress the breath-test results based upon a violation of his right to confidentially consult with his attorney in private pursuant to Code §804.20. The district court held the state violated Code §804.20 by prohibiting the attorney from consulting with his client in a confidential and private manner and suppressed the breath-test results of the defendant. The state appealed the district court's ruling. The Iowa Court of Appeals held that, regardless of whether Code §804.20 was violated, there was no evidence of intrusion of the attorney-client relationship and the defendant did not make any showing of prejudice resulting from the refusal to provide a private consultation room, thus the defendant was not entitled to suppression of the breath-test result. The defendant appealed to the Iowa Supreme Court (Court).

Issue. Is an attorney consultation considered confidential and in private under Code §804.20 when an attorney speaks with the attorney's client at a police station through an intercom system in a booth separated by a glass partition and monitored by a video camera?

Analysis. The Court stated the issue is a case of first impression to construe the rights of a defendant under Code §804.20 to confidentially consult with an attorney in private. The Court further stated Code §804.20 should be applied pragmatically by balancing the rights of the arrestee with the goals of the chemical-testing statutes. The Court held that the state violated the plain meaning of Code §804.20 by denying the defendant's right to meet with an attorney in a confidential and private place. Since the defendant's rights were violated under Code §804.20, the Court concluded the appropriate remedy was the suppression of the breath-test results. The state argued the attorney was allowed to consult with the defendant in confidence under reasonable security conditions imposed by the police department. Furthermore, the state argued the glass-partitioned booth was adequate for the limited statutory right to consultation with counsel under Code §804.20 when balanced against the safety and security needs of the police and the need to protect the integrity of the breath test. The Court reasoned the provision of a glass partition separating the defendant from his attorney violated the right of the defendant under the statute to meet in a confidential and private place with his attorney, especially since the defendant was nonviolent. The Court further reasoned the proper remedy for an attorney who passes contraband to a defendant in detention or who compromises the breath test is a disciplinary action before this Court, not restricting the rights of a defendant under Code §804.20 to meet with an attorney in confidence and in

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(Legal Update—Attorney-Client Confidentiality continued from Page 8)

private. The Court concluded there was substantial evidence that the video surveillance of the meeting area had a chilling effect on the attorney-client relationship. While the Court did not base the ruling on constitutional grounds, the Court stated that cases adjudicating the constitutional right to counsel were instructive in determining whether a statutory right to counsel has been violated in this case.

LSA Contact: Joe McEniry, Legal Services, (515) 281-3189.